

CITY COUNCIL

AGENDA REPORT

SUBJECT: CASINO UPDATE

AGENDA DATE: September 7, 2010

PREPARED BY: ADMINISTRATION

APPROVED BY: VICTOR M. CARRILLO, City Manager

FISCAL IMPACT: -0-

BACKGROUND INFORMATION:

As provided earlier, meetings and phone conversations have taken place with representatives of the Manzanita Tribe to discuss the status of the Casino application with the Bureau of Indian Affairs (BIA) and the United States Department of the Interior. The main discussion points of the project have pertained to the process they are following; timeline for reports and studies to be completed; resolution of the Environmental Impact Report (EIR); and the Consultation Letter approved and signed with the Governor of California's concurrence.

Manzanita received notice August 10, 2010, regarding the public comment period for the Environmental Impact Statement (EIS) from the Bureau of Indian Affairs (BIA) in Washington D.C., that they were being given 75 days for the public comment period instead of 45 days. The reason provided by BIA was by making an additional 30 days upfront, it will eliminate any possibilities for extensions later. The Manzanita Tribe and the Casino Project now have a definite date to end even if it extends the period by another month, and the Tribe has no other options but to agree and move forward.

As noted earlier, the documentation needed to be signed (notarized signatures in California format) by the project developer for the Callexico 111 Project, Hallwood Development (Udo Walther, from Texas) was required for recordation with the County of Imperial. The Imperial County Recorder's Office required a Tax Certificate from the County's Assessor's Office to issue a Tax Certificate because the property owner (Hallwood from Texas) needed to be current and pay all outstanding taxes due which were over \$300,000. The issue was resolved as Hallwood

successfully acquired bonding to pay the taxes of \$300,000 and the Tax Certificate has been issued.

The City of Calexico has finalized a Lot Line Adjustment to record a 60 acre parcel that Hallwood development will sell to the Manzanita Tribe. Once recorded via the Tax Certificate, there will be a new property description for the Manzanita Tribe to describe to the Bureau of Indian Affairs (BIA). When this is done, the Manzanita Tribe as per their application, will have this parcel placed in record of the BIA application and if approved will become Indian Reservation or Federal Land as it follows the Environmental process and flows from Washington D.C., to Sacramento, to Manzanita, and back to the BIA office in Sacramento, getting a Final National Publishing in the Federal Register, a process that should take three to six months.

Parallel to the Manzanita effort is the Raul Estrada lawsuit and the issues that need to be resolved regarding settlement. The settlement agreement was signed in January of 2010 but the dismissal of the lawsuit would not occur until the following issues are/were resolved such as (1) housing element amendment approval by the City Council which has been completed; (2) a development agreement for Raul Estrada's property which required approval; (3) a General Plan Amendment and Zone Change to Raul Estrada's property of approximately 33 acres of land from Commercial Highway and Industrial to High- Density Residential/Apartments.

The General Plan Amendment and Zoning change application requires environmental clearance and the City hired Kirt Coury, contract planner, to prepare a Negative Declaration. The Negative Declaration has been finished and was published for circulation on September 1, 2010. It requires that the City begin a 20-day Public review Period as per CEQA and pending no major issues, we will move the project for Planning Commission consideration on September 27, 2010. If it is approved by the Planning Commission, we are preparing and anticipate going before the City Council on October 19, 2010, for approval. If approved, the Zone Change aspect of the project will require a Second Reading which would be scheduled for November 2, 2010, and the Zone Change Ordinance would become effective 30 days after the second reading which be December 2, 2010.

The September to December timeline is subject to legal requirements pertaining to publishing/announcing public hearings; posting advertising notices; First Reading time requirements; and Second Reading time requirements. By following this process, the City will have met its obligation to the settlement requirements of the Estrada lawsuit. Then Raul Estrada will legally withdraw the lawsuit thus allowing the Bureau of Indian Affairs (BIA) to hold hearings regarding the Environmental Impact Statement which is a result of transferring City land to Federal land designation for purposes of establishing an Indian Reservation/Casino.

This has been a time-consuming process that has reached key milestones and accomplishments since its initial introduction to the City of Calexico. On April 14, 2006, the Manzanita Band of the Kumeyaay Indians submitted a "fee-to-trust" request for 60 acres of land to develop an off-reservation casino in Calexico. The proposal was initially a joint effort between the Manzanita and Viejas Bands of Kumeyaay Indians.

The Manzanita Band chose what is now Imperial county, and the City of Calexico as its proposed casino location as a result of its historic ties to the area and its strong cooperative relationship with the City of Calexico and support from the community. Prior to submitting the application, the Manzanita Band and the City entered into an Intergovernmental Agreement (IGA). The city based its participation in the IGA on a public referendum (city-wide vote) held on June 7, 2005, in which 56% of the voters approved of the casino project.

To proceed with the proposed development, the Manzanita Band needed approval from the BIA for the trust acquisition under 25 C.F.R. Part 151 and satisfy the "two-part determination" test under section 20 of the Indian Gaming regulatory Act (IGRA). It was necessary for Manzanita to seek an off-reservation location for economic development due to the isolated, rural nature of its existing reservation in the western part of the Carrizo Desert, a location that precludes significant on-reservation development.

In light of the agreements in place between the City and the Manzanita Band, the proposed Calexico development has met all of the standards ultimately applied through the "two-part" determination test, and the project has enjoyed strong community support since its introduction to the community and has satisfied all requirements for gubernatorial approval in California.

Manzanita's efforts to work with the City of Calexico are extensive. In March 2005, Manzanita prepared a Socio/Economic Impact study of the proposed development that is shared with the City; in May of 2005 a Job/Vendor Fair was held to present information regarding the casino project as well as a Town Hall meeting followed by the June 7, 2005, special municipal election garnering a majority support (56%) for the casino approval.

To summarize the terms of Inter-Governmental Agreement (IGA), Manzanita has agreed to, among other :

- Make an annual revenue-sharing payment to the city's General Fund in the amount of \$2,000,000 (adjusted for inflation) as compensation for impacts such as to Imperial County or the school district;
- Hire city residents as casino employees to the greatest extent possible;

- Provide its fair share of the costs of the design and construction of a permanent fire station;
- Obtain and pay for fire protection, police department services, sewer and water services, and waste disposal services;
- Make a one-time payment to the City for Development Impact Fees, pursuant to the City's approved rates;
- Provide a share of revenues from any future hotel(s) on the trust land to be used cooperatively with the city to market the City, region, and the facility;
- Establish a community-based foundation to underwrite projects, programs and activities that benefit City residents;

Manzanita has also agreed that if the cost of casino construction exceeds \$200,000,000 it will pay the city an amount equal to 1% of the excess amount annually. Further, if the Manzanita band construct any future expansion to the facility that has the effect of increasing the gaming floor space by 5% or more, Manzanita will pay an additional revenue sharing amount.

Since the Inter-Governmental Agreement was executed, Manzanita and the City of Calexico have diligently and patiently continued to work together and meeting on a monthly basis to guide the process through final resolution. If further information is needed on the above commentary, please contact me at your convenience.

Respectfully,

Victor M. Carrillo – City Manager